

REMARKS

The claims have been amended by rewriting claim 1. Claims 1-18 remain in the application.

Reconsideration of this application is respectfully requested.

**Claim Rejections - 35 U.S.C. § 102(b):**

*Claims 1-7 and 9-13 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bayer (DE 20009908, published 8/31/00, English Translation of DE 20009908 is provided by U.S. 2002/0172386).*

Applicants traverse in part and amend in part. The Bayer earpiece must be individually adapted to the anatomy [001] of the patient, for example by means of an impression-taking procedure [0042]. No such adaptation or procedure is required with Applicant's device. To further clarify that Applicants device is a one size fits all, claim 1 has been amended to reflect this feature in the recitation of the sound delivery tube. Support for this amendment is found on page 5, lines 19-24 – no new matter has been added.

Additionally, Applicants claim in independent claim 1, "... a self-retaining element, coupled to at least one of the housing and the sound delivery tube, wherein the self-retaining element rests beneath an inferior crus of the ear and provides positive retention of the communication device to the ear when the sound delivery tube is positioned for non-occluded sound delivery to the ear." Bayer does not teach self-retention as claimed by Applicant. The Examiner equates stabilization of the sound tube [0059] in Bayer to Applicant's positive retention. Applicant disagrees. The term "stabilization" taught by Bayer is used in the context of the earpiece stabilizing the sound tube [0007] and [0044] in the region of the entrance of the

auditory canal [0059] for the purpose of minimizing distortion [0004] which is the primary task of Bayer [0004].

Furthermore, Applicant questions the appropriateness of the term "otoplasty" in the Bayer reference. Otoplasty is a surgical procedure designed to set prominent ears back closer to the head. The word otoplasty is used in the Bayer's title and in the abstract but is never defined or used anywhere else the specification.

Accordingly, the rejection of claims 1-7 and 9-13 is believed to be overcome.

**Claim Rejections - 35 U.S.C. § 103:**

*Claims 8 and 14-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bayer in view of Taenzer et al. (6,009,183).*

*Claims 16-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bayer in view of Rapps et al. (6,101,259).*

In addition to the arguments provided above regarding Bayer, claims 8 and 14-15 and claims 16-18 provide further limitations to what is believed to be an allowable independent claim 1. Hence the dependent claims are also in condition for allowance.

Accordingly, this application is believed to be in proper form for allowance and an early notice of allowance is respectfully requested.

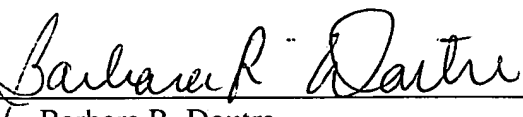
Please charge any fees associated herewith, including extension of time fees, to 50-2117.

Respectfully submitted,

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